

SPECIAL CIVIL APPLICATION No 2297 of 1989

Hon'ble MR.JUSTICE M.C.PATEL                      Sd/-

[illegible]

PARSHOTTAMBHAI G PATEL

STATE OF GUJARAT

MR LR POOJARI, AGP. for Respondent No. 1

This petition under Article 226 of the Constitution of India arises out of suo motu proceedings under section 84C of the Bombay Tenancy and Agricultural

Lands Act, under the following circumstances :

The land bearing survey no.5/1 admeasuring 1 Acre 18 Gunthas situated in the sim of village Antoli, Taluka Dehgam, District Ahmedabad belonged to respondents no. 2 to 6 (the names of respondents no. 3 to 5 were deleted during the pendency of the petition as they could not be served). According to the petitioner, he purchased one vigha of land from the said survey number from respondent no.2 in 1955 but it was not by way of registered sale-deed. The respondent no.2 had executed unregistered document. The petitioner's case is that he had been cultivating the said land as co-owner with respondents no. 2 to 6 since 1955.

The petitioner purchased the entire survey number by a registered sale-deed dated 11.4.1974. The land was mutated in the name of the petitioner on 30.8.1975 and the entry was certified on 21.9.1976.

On 15.9.1983 the petitioner made an application under section 65 of the Land Revenue Code to Taluka Development Officer, Dehgam seeking NA permission for constructing residential house and bhatthi for making milk product (mava). The Taluka Development Officer vide his order dated 13.5.1983 granted NA permission on the terms and conditions stated in the order. According to the petitioner, he also constructed a house in accordance with the permission so granted and he has been carrying on the business of milk products on the land.

The Mamlatdar & ALT, Dehgam issued notice dated 7.2.1986 under section 84C of the Act alleging that the land had been purchased in breach of section 63 of the Act. The statement of the petitioner was recorded on 14.2.1986 and he submitted that he had not committed any breach or violation of Section 63 of the Act. However, the Mamlatdar by his order dated 19.2.1986 held that the transfer is without permission under section 63 of the Act and he declared the transfer invalid under section 84C of the Act. The petitioner's appeal to the Deputy Collector was also dismissed and so was his revision application before the Gujarat Revenue Tribunal. The petitioner has brought under challenge the said order of Mamlatdar as confirmed in Appeal by the Deputy Collector and in revision by the Gujarat Revenue Tribunal.

The rule was issued on 12.4.1989 and by way of interim relief the impugned orders have been stayed during the pendency of the petition.

At the time of final hearing, the learned Counsel for the petitioner submitted that apart from other contentions the main contention is that the Mamlatdar could not have exercised suo motu powers after such inordinate delay. It is not in dispute that the petitioner had purchased the land in 1974 and the entry was certified in 1976. The suo motu proceedings were initiated more than ten years after the entry was certified. In the meantime the petitioner had also obtained NA permission and put up a house on the land. There is no explanation as to why the suo motu proceedings were not initiated for such a long period. It is well settled that suo motu powers under section 84C have to be exercised within reasonable period. In the present case it is very clear that the suo motu powers were not exercised for as long as ten years and in the mean time the petitioner had put up a house on the land after obtaining NA permission. In the circumstances, the exercise of suo motu powers by the Mamlatdar cannot be sustained. The petition is therefore allowed. The impugned orders of the Mamlatdar, as confirmed by the Deputy Collector and Revenue Tribunal in revision (Annexures "C", "D" and "E") are quashed and set aside. Rule made absolute. No order as to costs.

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m.m.bhatt